

85th Legislative Session – 2010

Committee: Senate Judiciary

Thursday, March 04, 2010

P - Present
E - Excused
A - Absent

Roll Call

P Gillespie
P Heidepriem
P Schmidt
P Turbak Berry
P Vehle
P Tieszen, Vice-Chair
P Abdallah, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Gene G. Abdallah, Chair.

MOTION: TO APPROVE THE MINUTES OF TUESDAY, MARCH 2, 2010

Moved by: Gillespie
Second by: Tieszen
Action: Prevailed by voice vote.

HB 1077: enact a procedure for delayed appeal if the petitioner was unconstitutionally denied the right of appeal.

Presented by: Greg Sattizahn, Unified Judicial System

MOTION: AMEND HB 1077

1077rc

On page 1 of the House engrossed bill, delete lines 4 to 14, inclusive, and insert:

"

Section 1. If the court finds that an applicant was denied the right to an appeal from an original conviction in violation of the Constitution of the United States or the Constitution of South Dakota, the court shall issue a new judgment and impose the same sentence if such relief is requested within a reasonable time and an adequate record of the original trial proceeding is available for review. The court shall advise the applicant of the following:

- (1) The rights associated with an appeal from a criminal conviction; and
- (2) The time for filing a notice of appeal from the reimposed judgment and sentence.

Nothing in this section limits an applicant's right to habeas corpus."

Moved by: Gillespie
Second by: Vehle
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1077 AS AMENDED

Moved by: Gillespie
Second by: Turbak Berry
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

MOTION: PLACE HB 1077 ON CONSENT CALENDAR

Moved by: Turbak Berry
Second by: Tieszen
Action: Prevailed by voice vote.

HB 1136: limit asbestos-related liabilities for certain successor corporations.

Presented by: Representative Roger Hunt (Handouts: #1)
Proponents: Dick Gregerson, Crown, Cork & Seal

MOTION: DO PASS HB 1136

Moved by: Vehle
Second by: Gillespie
Action: Prevailed by roll call vote. (6-1-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry, Vehle, Abdallah

Voting No: Tieszen

The gavel was passed to Senator Craig Tieszen, Vice-Chair.

HB 1231: provide for the monitoring of the prescribing and dispensing of controlled substances.

Presented by: Senator Kathy Miles
Proponents: Marty Jackley, Attorney General
Representative David Lust

MOTION: DO PASS HB 1231 AS AMENDED

Moved by: Abdallah
Second by: Heidepriem
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

The gavel was returned to Senator Gene G. Abdallah, Chair.

HB 1265: revise certain provisions related to indigent counsel.

Presented by: Senator Tom Hansen
Proponents: Jeff Banks, Beadle County States Attorneys Office

MOTION: AMEND HB 1265

1265ra

On page 1, line 13, of the printed bill, delete everything after "If the" and insert "court-appointed attorney is a party to a contract with the county to provide indigent counsel pursuant to subdivision 23A-40-7(3), the compensation for that attorney shall be that which the attorney would receive".

On page 1, delete lines 14 and 15.

Moved by: Turbak Berry

Second by: Tieszen
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1265 AS AMENDED

Moved by: Gillespie
Second by: Vehle
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

MOTION: PLACE HB 1265 ON CONSENT CALENDAR

Moved by: Turbak Berry
Second by: Vehle
Action: Prevailed by voice vote.

HB 1110: revise certain provisions relating to statutory rape.

Presented by: Representative Richard Engels
Opponents: Chuck Schroyer, SD States Attorneys Association
Paul Bachand, Attorney General's Office

MOTION: AMEND HB 1110

1110rc

On page 1, between lines 2 and 3 of the House Judiciary Committee engrossed bill, insert:

"

Section 1. That § 22-22-7 be amended to read as follows:

22-22-7. Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the actor is less than three five years older than the other person victim, the actor is guilty of a Class 1 misdemeanor. ~~If an adult has a previous conviction for a felony violation of this section, any subsequent felony conviction for a violation under this section, is a Class 2 felony.~~ Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer."

Moved by: Vehle
Second by: Turbak Berry
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1110 AS AMENDED

Moved by: Turbak Berry
Second by: Heidepriem
Action: Prevailed by roll call vote. (4-3-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry

Voting No: Vehle, Tieszen, Abdallah

HB 1161: provide that an out-of-country foreign judgment need not be recognized if the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless a court in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press as would be provided in this state.

Presented by: Senator Corey Brown
Proponents: David Bordewyk, SD Newspaper Association

MOTION: DO PASS HB 1161

Moved by: Vehle
Second by: Schmidt
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DEFER HB 1161 TO THE 41ST LEGISLATIVE DAY

Moved by: Heidepriem
Second by: Gillespie
Action: Prevailed by roll call vote. (5-2-0-0)

Voting Yes: Gillespie, Heidepriem, Turbak Berry, Vehle, Tieszen

Voting No: Schmidt, Abdallah

HB 1164: revise no contact provisions in cases of stalking and domestic abuse.

Presented by: Representative David Novstrup

Proponents: Dianna Miller, SD Network Against Family Violence & Sexual Assault
Senator Margaret Gillespie
Kim Malsam-Rysdon, Department of Social Services

MOTION: DO PASS HB 1164

Moved by: Turbak Berry
Second by: Vehle
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

MOTION: PLACE HB 1164 ON CONSENT CALENDAR

Moved by: Vehle
Second by: Tieszen
Action: Prevailed by voice vote.

HB 1167: revise the term of service of a grand jury.

Presented by: Representative Oran Sorenson
Opponents: Chuck Schroyer, SD States Attorneys Association
Paul Bachand, SD States Attorneys Association

MOTION: DEFER HB 1167 TO THE 41ST LEGISLATIVE DAY

Moved by: Tieszen
Second by: Gillespie
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Gillespie, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

Excused: Heidepriem

HB 1177: prohibit the granting of subsequent suspended impositions of sentence to the same defendant.

Presented by: Senator Craig Tieszen

MOTION: DO PASS HB 1177

Moved by: Gillespie

Second by: Schmidt
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Gillespie, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

Excused: Heidepriem

MOTION: PLACE HB 1177 ON CONSENT CALENDAR

Moved by: Gillespie
Second by: Turbak Berry
Action: Prevailed by voice vote.

HB 1187: prohibit the killing, injury, or interference with a law enforcement support animal and to establish certain penalties.

Presented by: Senator Kathy Miles
Proponents: Representative Martha Vanderlinde

MOTION: DO PASS HB 1187

Moved by: Tieszen
Second by: Gillespie
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Gillespie, Schmidt, Turbak Berry, Vehle, Tieszen, Abdallah

Excused: Heidepriem

MOTION: PLACE HB 1187 ON CONSENT CALENDAR

Moved by: Tieszen
Second by: Gillespie
Action: Prevailed by voice vote.

The gavel was passed to Senator Craig Tieszen, Vice-Chair.

HB 1228: establish an ancillary standard in determining the best interests of a child.

Presented by: Representative Richard Engels

MOTION: DO PASS HB 1228

Moved by: Turbak Berry

Second by: Gillespie

Action: Prevailed by roll call vote. (5-0-2-0)

Voting Yes: Gillespie, Schmidt, Turbak Berry, Vehle, Tieszen

Excused: Heidepriem, Abdallah

MOTION: PLACE HB 1228 ON CONSENT CALENDAR

Moved by: Turbak Berry

Second by: Gillespie

Action: Prevailed by voice vote.

The gavel was returned to Senator Gene G. Abdallah, Chair.

MOTION: ADJOURN

Moved by: Gillespie

Second by: Tieszen

Action: Prevailed by voice vote.

Rena K. Ortbahn
Committee Secretary

Gene G. Abdallah, Chair